

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER 7
)	
THOMAS E. FISCHER,)	CASE NO. 08-74070 - MHM
CAROL FISCHER,)	
)	
Debtors.)	
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NEIL C. GORDON, Trustee,)	
)	
Plaintiff,)	
v.)	ADVERSARY PROCEEDING
)	NO. 08-6521
AMERIQUEST MORTGAGE CORP.,)	
JPMC SPECIALTY MORTGAGE, LLC,)	
)	
Defendants.)	

O R D E R

This adversary proceeding, which seeks relief under the Truth-in-Lending Act, is before the court on Plaintiff's motion to strike eight of Defendant's affirmative defenses set forth in Defendant's Answer to the complaint. Resting almost completely on an extensive quote from [the incorrectly cited] *Castillo v. Roche Laboratories, Inc.*, 2010 WL 3027726 (S.D. Fla. 2010), Plaintiff asserts that the pleading standards set forth in *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 554, 570 (2007) should be applicable to affirmative defenses.

No circuit courts have addressed whether *Iqbal* and *Twombly* apply to affirmative defenses. Among the district courts that have addressed the issue, however, the majority concludes that *Iqbal* and *Twombly* do apply to affirmative defenses. See *Castillo v.*

Roche Laboratories, Inc., 2010 WL 3027726 (S.D. Fla. 2010); *Racick v. Dominion Law Assoc.*, 270 FRD 228 (E.D. N.C. 2010) and cases cited therein. The majority position is primarily based upon two considerations. First is the recognition that fairness, common sense and litigation efficiency require application of the same standard to both complaints and defenses. The pleading of a defense should provide more than merely the possibility that the defense may exist. Second is the observation that defenses that are simply boilerplate recitations or conclusory allegations clutter the docket and create the need for unnecessary or extended discovery.

Defendant's first affirmative defense is: "The Complaint fails to state a claim upon which relief may be granted." This bare recitation of the provisions in Rule 12(b)(6) is insufficient to provide notice of the factual basis of the defense. *See Castillo and Racick, supra.*

Defendant's second affirmative defense is: "The alleged claims of the Trustee are barred by doctrines of waiver, laches and estoppel." This bare recitation of a legal conclusion is insufficient to provide notice of the factual basis of the defense. *See Racick, supra.*

Defendant's third affirmative defense is: "The alleged claims of the Trustee are barred because the Trustee has not complied with the requirements for rescission." This conclusory allegation is insufficient to provide notice of the deficiencies of the complaint.

Defendant's fifth affirmative defense is: "The alleged claims of the Trustee against Chase and alleged damages sought from Chase are barred, in whole or in part, because Chase is an assignee under TILA pursuant to 15 U.S.C. §1641." This defense provides sufficient allegations to provide Plaintiff with notice of the factual basis of the defense.

Defendant's [second]¹ fourth (actually, the seventh) affirmative defense is: "The alleged claims of the Trustee are barred because Chase acted in good faith to comply with all rules, regulations and interpretations of law relevant to the allegations in the Complaint." This allegation of a condition of mind is sufficient to provide Plaintiff with notice of the factual basis of the defense. *See Racick, supra*.

Defendant's [second] fifth (actually, the eighth) affirmative defense is: "The alleged claims of the Trustee for rescission are barred because Chase did not violate TILA, but if a technical violation is proved, it is not material to allow a rescission under TILA." This defense provides sufficient allegations to provide Plaintiff with notice of the factual basis of the defense.

Defendant's eighth affirmative defense is: "The Trustee's request for equitable relief should be barred because the Trustee has adequate remedies at law." This defense states a legal conclusion and is insufficient to provide notice of the factual basis of the defense.

Defendant's ninth affirmative defense is: "The alleged claims of the Trustee are barred by the doctrines of accord and satisfaction." Again, this defense states a legal conclusion and is insufficient to provide notice of the factual basis of the defense.

Defendant's tenth affirmative defense is: "The alleged claims of the Trustee are barred because the Debtors were fully informed and completely understood the terms of their loan." This allegation of a condition of mind is sufficient to provide Plaintiff with notice of the factual basis of the defense.

Accordingly, it is hereby

¹ Defendant's Answer misnumbers its affirmative defenses by using "Fourth" and "Fifth" twice.

ORDERED that Defendant's First, Second, Third, Eighth and Ninth Affirmative Defenses are *stricken*. Defendant is allowed 28 days within which to file a further amended Answer.

The Clerk, U.S. Bankruptcy Court, is directed to serve a copy of this order upon Plaintiff's attorney, Defendant's attorney, and the Chapter 13 Trustee.

IT IS SO ORDERED, this the 7th day of April, 2011.



MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE